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NO. 85-387

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

WILLIAM R. MAINES

AND

PETER K. GUTHRIE,

Petitioners

v.

SECRETARY OF STATE,

Respondent

REPLY BRIEF

OF THE

PETITIONERS

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PETITIONERS' REPLY TO NEW MATTER

I. PETITIONERS' CLAIMS ARE NOT MOOT.

A. Petitioners' Claims for Relief Are Not Fully Satisfied.

Respondent's opposing brief ignores three elements of relief prayed for by Petitioners in their Amended Verified Class Action Complaint which remain unsatisfied to this date and which continue to provide them with a personal stake in the outcome of this case on the merits.[1]

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[1] Petitioners concede that the denial of their motion for class certification, however erroneous, and the Maine Supreme Court's failure to act upon Petitioners' appeal from that denial, however conflicting with this Court's precedents, e.g., United States Parole Commission v. Geraghty, 445 U.S. 388 (1980), do not raise federal questions of law since they involve the interpretation of Rule 23 of the Maine Rules of Civil Procedure and the standing requirements of Maine law.

First, Petitioners sought an injunction requiring the restoration of their licenses and rights to operate, without the payment of any reinstatement fee. While it is true that Petitioners' licenses were restored on May 16, 1984 and February 12, 1984 respectively,[2] it is also true that each of them were required to pay to Respondent $20.00 in reinstatement fees in order to obtain said restorations.[3] Payment of these fees were required by 29 M.R.S.A. §2241-D(1) and have given rise to a claim for damages against Respondent not possessed by Petitioners at the time they filed

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2 Respondent's failure to notify the Maine Supreme Judicial Court of these restorations at oral argument on June 7, 1984, while not a waiver of the mootness question, can only be interpreted as an indication that he then believed the case to be otherwise "live".

3 See Appendix B of the Petition for Writ of Certiorari, pp. B-27 and B-32, for the requirement of a reinstatement fee in the Notices of Suspension mailed to Petitioners.

their action in 1983. Given that this claim for damages must be pursued in state court,[4] it would be an exercise in utter futility to require Petitioners to refile their suit as a damage action, only to be again confronted with the Maine Supreme Court's application of res judicata to bar their action.

Second, Petitioners sought the expungement of their records maintained by Respondent pertaining to their Teen Drinking Act suspensions. Pursuant to Maine Law, Petitioners have a right to such expungement where it is determined that the original suspension was illegal. 29 M.R.S.A. §§2241-G(K)(4), (5).[5]

This provision of Maine law reflects the Legislature's determination that a

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[4] Pennhurst State School and Hospital v. Halderman, ____ U.S. ____, 52 U.S.L.W. 4155 (1984).

[5] Respondent's Appendix B, p. 18; Petitioners' Appendix C, p. C-11.

person's motor vehicle driving record has important collateral consequences for e.g., the cost of insurance, albeit that such non-statutory consequences may not in themselves be legally sufficient to keep alive an otherwise moot case. See, e.g., Lane v. Williams, 455 U.S. 624 (1982).

Third, Petitioners have sought their costs of suit, including a reasonable attorney's fee pursuant to 42 U.S.C. §1988. Insofar as an award of fees under §1988 depends upon a judicial determination that Petitioners are the prevailing parties in the litigation, they have a sufficient personal stake in obtaining a ruling on the merits of the litigation. Cf., Deposit Guaranty Nat. Bank v. Roper, 445 U.S. 326, 336, 346 n.2 (Powell, J. dissenting) (1980).

B. Petitioners' Grounds For Relief Have Not Been Fully Cured By The Legislature.

While it is true that the Maine Legislature has cured several due process deficiencies in the original Teen Drinking Act through the enactment of P.L.1983, c. 850, there remain several grounds for relief in Petitioners' Amended Complaint which will give rise to prospective declaratory and injunctive relief:

(1) Petitioners allege in Count Two of said Complaint that the Teen Drinking Act deprives them of equal protection of the laws under the 14th Amendment to the U.S. Constitution and Article I, Section 6-A of the Maine Constitution in that said Act invidiously discriminates against persons under twenty years of age

and is not rationally related to a legitimate state interest.

P.L.1983, c. 850 did nothing to moot this ground for relief. Indeed, the class discriminated against now consists of those persons under twenty-one years of age with blood-alcohol levels of .02% or more, a level which bears no scientific correlation at all with highway safety.

(2) Count Six of the Complaint challenges the state's right to provide them with a post-suspension hearing as opposed to a pre-suspension hearing, in that the blood-alcohol level of .02% does not justify the more expedient procedure. Current Maine law still provides for a post-suspension hearing for those subject to the Teen Drinking Act. 29 M.R.S.A. §2241-G(2)(B).

II. THE ADMINISTRATIVE ORDER IS NOT ENTITLED TO RES JUDICATA EFFECT.

Respondent's argument at pp. 4-6 of his opposing brief is a creative attempt to provide a rationale for the Law Court's decision in this case. Certainly it is apparent that the Law Court itself did not use the analysis put forth by the Respondent, particularly his emphasis upon the Petitioners' ability to have their constitutional claims heard in the Superior Court on appeal from the administrative determination.

Even if the Law Court had relied upon Respondent's analysis, the application of res judicata to the administrative order in this case would have offended principles of due process.

Respondent ignores the plain meaning of former §2241-G(2)(B) that the

administrative hearing was limited in scope solely to the issue of the arresting officer's probable cause. No other issues, factual or legal, were properly before the agency.

Thus, Petitioners would have been barred at the agency hearing from developing the facts necessary to support their equal protection argument, e.g., that the Teen Drinking Act is not rationally related to any legitimate governmental objective, and that there is no scientific evidence supporting the establishment of .02% as a blood-alcohol level related to highway safety.

Moreover, none of Petitioners' legal challenges to the Act were cognizable at the agency level.

Also, respondent's reliance upon the hearing which Petitioners could have had in the Superior Court on appeal from an

administrative hearing order, ignores the limitations placed upon the scope of review at such a judicial hearing.

Such hearings are not de novo; indeed, the reviewing court "... shall not substitute its judgment for that of the agency on questions of fact." 5 M.R.S.A. §11007(3).

Thus, the Superior Court would also be bound by the statutory limits on the scope of the factual issues.

Furthermore, Respondent's insistance that Petitioners were required to resort to the Superior Court on appeal to resolve their legal challenges,[6] rather than through this §1983 action, simply confuses the doctrine of res judicata with that of exhaustion of remedies and would result in a bar to any collateral

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[6] Respondent concedes that the agency had no power to adjudicate Petitioners' legal challenges.

attack on an agency decision, however deficient. In Maine, it is not necessary to appeal administrative action before filing a direct challenge to the constitutionality of a statute, where agency fact-finding is not appropriate. Boston Milk Producers, Inc. v. Halperin, 446 A.2d 33, 36 (Me. 1982).

CONCLUSION

For the foregoing reasons, Petitioners renew their request for the granting of a Writ of Certiorari.

Date: ~~October~~ 18, 1985.

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APPENDIX A

I. 5 M.R.S.A. §11007(3)

§ 11007. Manner and Scope of Review

. . . .

3. Judgment. The court shall not substitute its judgment for that of the agency on questions of fact.

. . . .

II. 29 M.R.S.A. §2241(D)

§2241(D). Reinstatement Fee

1. Fee. Notwithstanding any other provisions of this Title, before a mandatory suspension, a mandatory revocation or a suspension ordered by the Secretary of State of a person's driving privilege may be terminated or

reinstated, there shall be paid to the Secretary of State a fee of $25.00 which shall be in addition to the regular registration or license fee.

2. Application. This section shall not apply to any suspension or revocation that is set aside by the Secretary of State or a court.